STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION
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270th day 12/20/01
Staff: PE-LB
Staff Report: 10/30/01
Hearing Date: 11/15/01
Commission Action:

AVIS, *Governor*

Th 2.5 a

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-01-190

APPLICANTS: Calvary Church of Pacific Palisades;
City of Los Angeles Department of Recreation and Parks

AGENTS: Mark C. Allen III, Dan Barnett, Geosoils Consultants, Peter Brandow AIA; Donald Cunningham, Shannon Nonn, Marilyn Tamuri, VTN Assoc., Jim Wadsworth, Charles Yelverton

PROJECT LOCATION: 701 Palisades Drive, Pacific Palisades, City of Los Angeles, Los Angeles County

DESCRIPTION OF PROPOSED PROJECT: The proposed project would allow construction of a 32,400 square-foot sports field; a retaining wall on each side of the field, including a 278-foot long, up to 23-foot high, wall at the toe of the western slope; relocation of 33 existing parking spaces; and 16,400 cubic yards of grading which would extend on to 1.25 acres of a 107.23 acre City park. The rear wall, 15,000 square feet of the playing field and much of the grading would extend into the park and outside an Urban Limit Line that delimits the park, which is deed restricted to open space to prevent landform alteration, vegetation removal, or further subdivision (Exhibits 2, 3, 28.) The sports field would permanently occupy approximately 15,000 square feet of the public park. Approval of the project would recognize the creation of a 1.25-acre joint use area with restricted access rights within the 107.23-acre park. No additional parking spaces are being provided for the new sports field.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending **DENIAL** of the proposed project because it establishes a private use on public park land and proposes grading and permanent removal of native vegetation on a steep mountain hillside. The proposed project is inconsistent with Coastal Act policies protecting public access, public recreation, public views, habitat and the integrity of natural landforms. The applicants propose only limited use of the proposed sports field by youth groups other than those associated with the Calvary School or the Calvary Church. They propose that the field would be open to organized groups from the nearby Pacific Palisades Community from 4:00 p.m. to 6:00 p.m. on Fridays during the spring, and for three one-week, half-day soccer camps during the summer months. During the fall, the field would be available to AYSO Region 69 “K” on Fridays from 4:00-6:00 p.m. and on two Saturdays a

year the field would be available to Cub Scout packs from the Pacific Palisades community from noon to 5:00 p.m. Although roughly half of the proposed field would be located on public park land owned by the City of Los Angeles, the City Department of Recreation and Parks can only request use by organized youth groups (under the age of 15) and for a maximum of 6 days a year, if no school activities are anticipated for the requested date and time. The field would not be available at any time for use by groups that include members over the age of 15 or to individuals for passive use when it is not being used by the above groups.

The applicant's representatives request that the Commission approve the project without requiring increased public use. Staff is recommending that the Commission **deny** the proposal for two reasons. Most important, the proposed project reserves dedicated public recreation land for private purposes. Secondly the project would extend grading onto hillside land that has not been graded. The grading would extend within the banks of a small stream, which supports riparian trees although fire clearance has reduced its habitat value. The wall and buttress fill would extend a hard edge into a habitat area. The wall and the field would be visible from public areas, although the applicant proposes to lower the field and to plant vines on the walls to reduce their obtrusiveness. The hillside and much of the stream channel is deed restricted to protect natural vegetation and natural land forms. The dedications and restrictions were required to mitigate the underlying 740-unit project's inconsistency with Sections 30250, 30251, 30253, 30210 and 30223 of the Coastal Act.

In June, 2001, staff recommended that the Commission approve this project with conditions of assumption of risk, revegetation and maintenance, and most important, given that half the field is located on public land, with a condition to allow use by individuals and by organized groups from throughout the City of Los Angeles during non-school hours or when school events were not planned. More specifically, staff recommended that the Commission approve the project with conditions that the applicants operate the field as a public facility open to individuals and to use by groups for organized events and programs in a manner consistent with other City parks throughout the City of Los Angeles. The applicant requested a continuance before the public hearing to investigate alternatives. The applicant's representatives investigated changing their project to allow the public to use the facility more frequently and found that it would require an amendment of its approval from the City Park and Recreation Commission and an amendment to its City Conditional Use Permit. They assert that these agencies would not approve greater use of the facility by the public or by groups from other areas of the City of Los Angeles, given the opposition of neighboring homeowners. The applicant's representatives contend that the neighboring homeowners' groups had supported the project only because the City has guaranteed that the field would not be open many hours a week to large numbers of children, and that these homeowners were unwilling to support a change that would allow more children to use the facility, with attendant noise and traffic.

Half the sports field, most of the retaining wall, the cut slopes, brow ditch, energy dissipaters and vegetation removal would be located outside the Urban Limit Line established by permit A-381-78A, which created the subdivision on which both lots are located. Permit A-381-78A allowed subdivision of 1200 acres for 740 dwelling units but limited grading outside the Urban Limit Line to "paved or unpaved pathways and other incidental improvements for low intensity recreation." The Commission required the applicant to dedicate the area outside the urban limit to State Parks (or, as later amended, to either State Parks, a private non-profit organization approved by the Executive Director, or to the City of Los Angeles Department of Recreation and Parks) and to deed restrict the land to prevent further development except as permitted by the permit or for "park purposes," finding: "for it is only with the dedication of these lands for permanent reservation of visual and landform resources and for public recreational use that the Commission can find the development of the four tracts on the balance most protective of significant coastal resources." If, therefore, this were treated as an application for an amendment to that permit, it would have to be rejected as lessening the intended effect of those conditions.

APPROVALS RECEIVED:

1. City of Los Angeles Planning Department Case No. ZA 85-1219 (CUZ)(PAD); Plan Approval.
2. City of Los Angeles Department of Building and Safety, log 30714 Geologic review letter, signed by Dana Prevost and Theodore Gilmore. July 10,2000.
3. City of Los Angeles Board of Building and Safety, July 26, 2000, Board File 000085, Approval of Export of 10,000 Cubic Yards.
4. City of Los Angeles Board of Recreation and Park Commissioners, October 6, 1999 approved report of General Manager to (1) approve the shared use agreement of a portion (1.25 acres) of Santa Ynez Canyon Park for 25 years to Calvary Church of Pacific Palisades with a 25-year "lease" renewal option; (2) authorize the President and Secretary of Board to sign the Shared Use Agreements between the Calvary Church and the Department after approval by the Cultural Affairs Department of the design of the sports field and all other City approvals.

SUBSTANTIVE FILE DOCUMENTS:

1. A-381-78 (Headland Properties and Gateway Associates) as amended through A-381-78A11, including A-381-78A, A3, A4, A5, A7, A8, A9, A10 and A11.
2. City of Los Angeles Board of Recreation and Park Commissioners: Santa Ynez Canyon Park, agreement for shared use of a portion of Santa Ynez Canyon Park by Calvary Church of the Pacific Palisades, Oct. 6, 1999.

3. City of Los Angeles Department of Recreation and Parks, Report of the General Manager concerning the shared use agreement of a portion (1.25 acres) of Santa Ynez Canyon Park for 25 years to the Calvary Church of Pacific Palisades with a 25-year lease renewal option.
4. City of Los Angeles, Case No. ZA 85-1219(CUZ)(PAD) Conditional Use Permit for plans to permit the addition of a vacant 1.25 acre parcel of land leased from the Los Angeles Department of Recreation and Parks to an existing church and school site for use as an athletic field (Parcel A and portion of Parcel B, PMLA 5372.
5. Geosoils Consultants Inc., Geologic and Geotechnical Engineering Report, Proposed Sports Field and Parking Area, Parcel Map 5372, Lot 1, 701 Palisades Drive, Pacific Palisades, for Calvary Church, April 21, 2000, W.O. 3910B
6. GeoSoils Consultants Inc. 2001, "Response to California Coastal Commission geologic review memorandum, dated March 28, 2001, regarding GeoSoils Consultants, Lot 1, Parcel Map 5372, 701 Palisades Drive, Pacific Palisades, California for Calvary Church", 6 p. geologic report dated 12 April 2001 and signed by D. D. Yoakum (GE 918) and R. F. Ruberti (CEG 1708
7. Mark Johnsson, Senior Staff Geologist, California Coastal Commission, 25 April 2001: Review of geotechnical response to CCC comments, Calvary Church.
8. Mark Johnsson, Senior Staff Geologist, California Coastal Commission, 28 March 2001: Geologic Review Memorandum, Regarding GeoSoils Consultants, “Lot 1, Parcel Map 5372, 701 Palisades Drive, Pacific Palisades, California for Calvary Church".
9. GeoSoils Consultants Inc. 2001, "Response to California Coastal Commission.
10. Wolfe, Scott, Biological Survey, Proposed Sports Field at the Calvary Church of the Pacific Palisades, VTN ref. No. 6158, October 5, 2000.
11. 5-00-484 (LA City Dept Recreation and Parks); A5-VEN-01-008, (LA City Dept Recreation and Parks); 5-91-286, as amended (LA City Dept Recreation and Parks), 5-85-076 (Jonathan Club).

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

Staff recommends that the Commission make the following motion and adopt the following resolution.

MOTION: ***I move that the Commission approve Coastal Development Permit No. 5-01-190 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby **DENIES** a coastal development permit for the proposed development and adopts the following findings on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. HISTORY OF THE REQUEST.

On January 9, 2001, the co-applicants, Calvary Church of the Palisades ("Calvary" or "the Church") and the Los Angeles City Department of Recreation and Parks, submitted an application to build a privately operated ball field. Calvary proposed to build the ball field partly on land owned by the City of Los Angeles. A shared use agreement between Calvary and the City of Los Angeles would give Calvary primary control and access over the area and allow a limited amount of use by groups that were not associated with the Church. The Executive Director initially informed the applicants that the proposed project was an amendment to Coastal Development Permit A-381-78, and subsequently accepted this application (See "History of the Present Application," below.)

B. HISTORY OF UNDERLYING APPROVAL- A-381-78A.

The Commission granted permit A-381-78 to Headlands Properties[1] in 1979 for grading, roads and utilities to accommodate a 230 unit residential tract in the Santa Monica Mountains, in a then undeveloped 1200-acre holding in the Pacific Palisades District of the City of Los Angeles. In a 1980 amendment to the permit, A-381-78A, the Commission approved four tracts, established the total number of dwelling units at 740, allowed massive grading within an Urban Limit Line, the construction of this church, (described as an "institutional site"), two sites for commercial development (2 acre total), and required the dedication in fee of almost 1,000 acres of public open space, the area outside the Urban Limit Line, to State Parks. A 1987 amendment, A-381-78-A7, allowed land that was too close to residential structures to be acceptable to State Parks to be dedicated to the City

[1] Headlands is also known as Palisades Resources, Palisades Highlands and Gateway Corporation

of Los Angeles Board of Recreation and Parks. In 1989 the City of Los Angeles Department of Recreation and Parks accepted a total of 475 acres of the public open space land including the canyon sides of lower Santa Ynez Canyon, a total of 272 acres, for park purposes. The park land subject to this application was accepted in that action (Exhibits 14 and 15.) In describing the dedications, the Commission consistently described the dedicated land as dedicated for "public park purposes." The full text of the Commission's original adopted findings and conditions of A-381-78, the underlying approval, is found in Exhibit 20.

The Commission required the Urban Limit Line to assure consistency of the underlying project with Sections 30210, 30223, 30230, 30231, 30240, 30250 30251 and 30252 of the Coastal Act, in order to consolidate massive grading in one part of the 1200 acre site and to protect public views, land forms, public recreational opportunities and habitat outside the disturbed area. Condition 3 required the applicant to record a deed restriction applicable to all lands outside the urban limit line along with the recordation of all tracts to restrict the use of all lands outside the urban limit line, preventing further subdivision except for park purposes and preventing development outside the urban limit line except as permitted by the permit or for park purposes. The recorded deed restriction applies to the park land that is subject to this application.

The underlying permit restricted development outside the urban limit line in three ways, all of which still apply to the park land subject to this application. Condition 1(a) stated that all "grading, structural development, and subdivided lots shall be located entirely within the urban limit line," and condition 1(c) created some limited exceptions to that prohibition, stating in part that "outside of the Urban Limit Line: minor grading may be performed to re-contour previously graded land; paved or unpaved pathways and other incidental improvements for low intensity recreation may be constructed". Condition 2 required the applicant, as it recorded the four tracts, to dedicate the land outside the Urban Limit Line in fee to the California Department of Parks and Recreation, and in the mean time restricted its use. Condition 3 required that the applicant, as it recorded each tract, record a deed restriction to prevent development outside of the Urban Limit Line except as permitted by this permit or for park purposes. (See Exhibit 20 for the text of the Commission's revised findings adopted in 1980, which include these Conditions. Exhibit 31 contains the most recently amended conditions.)

When the Commission approved all four tracts of underlying project in 1980, in A-381-78A[2], the newly adopted Coastal Act contained policies that were much more restrictive

[2] In 1979 in approving 381-78, the Commission approved 230 units; in 1980 in approving 381-78A the Commission approved four tracts and 740 units, as shown in Exhibit 20. In that action the Commission required the dedications and established the ULL. The urban limit line has been extended twice since. Once to accommodate the Church and its required buttress fills (for geological mitigation), once to respond to geological problems near Temescal Ridge (Tract 32184).

concerning landform alteration than previous interpretations of applicable County and City rules. Sections 30251 and 30253, discourage landform alteration and Section 30240 protects environmentally sensitive habitat. These policies were based on studies that indicated several reasons to preserve natural landforms: protection of watershed, protection of natural vegetation, protection of public views and assurance of safety and geologic stability. The first major amendment A-381-78A expanded a limit of grading, called the Urban Limit Line first established in the original action. Within the Urban Limit Line, grading and landform alteration, and construction of buildings and roads could take place. Outside the Urban Limit Line, no grading could take place except for park purposes, and vegetation removal was limited to thinning for fire control within 100 feet of residential structures. The institutional site (where the church is now located) was identified on a seven-acre site that had been graded and disturbed, and the Commission found that intense development could occur within this area without requiring additional landform alteration.

In the Commission's approval of the underlying permit, the findings address the protection of undisturbed habitat and the undisturbed nature of the hillsides, especially in the Gateway, where the present project is proposed. The findings for approval of the original permit state:

> The project would result in permanent alteration of approximately 145 acres of the 185 acres in Tracts 31935 and 32184. A firm Urban Limit Line is to be established with permanently preserved buffer areas designed to protect the integrity of the local wildlife systems from both construction and residential impacts.
>
> The project will result in alteration of only approximately 25 acres out of the total 122-acre Gateway property. The substantial acreage left intact will protect the integrity of local wildlife systems from construction and residential commercial impacts. Based upon this fact the Commission finds this project does not involve any significant disruption of habitat values and is compatible with the continuance of surrounding habitat areas so this it is consistent with the policies of Section 30240 of the Coastal Act.

Habitat. The 1980 findings that addressed the protection of the hillside habitat were based on a characterization of the slopes as an important watershed, and a finding that if the slopes were not cleared, more watersheds would remain. At the time of the Commission's original action, the Los Angeles basin and the City of Santa Monica obtained a large proportion of their drinking water from ground water. The implication was that extensive areas were needed to protect urban water supplies, and that dedication of almost 1,000 acres of steep land would do so. The objective was to protect an extensive partially pristine and partially degraded area. This strategy, appropriate to a large tract, was not dependent on the presence of a unique or irreplaceable component, with the implication that if there was some habitat found that was irreplaceable, that particular habitat must be

saved, but leaving little grounds to protect the common and extensive watershed cover, on which the streams and the ground water depended. There was very little analysis of the kind of habitat or its value, although some of the letters the Commission received stated that there were "five endangered species" in the area. (Exhibit 25). In the late 1970's coastal sage scrub had not been identified as habitat for several endangered species. At the time, the public and government agencies perceived "brush" as a nuisance. Although the Commission referred generally to the "habitat policies" of the Coastal Act, in order to carry out these policies, the Commission applied the principals of Section 30252, which encouraged clustering of development within a largely undisturbed landscape. The Commission imposed the Urban Limit Line and limited removal of vegetation to areas within the Urban Limit Line. The exception was for purposes of fire clearance within 100 feet of residential structures. The decision allowed greater densities within the area to be developed in exchange for preservation of other lands. Within the larger 740-unit Headlands/Pacific Highlands development there are town houses and condominium units sharing views of protected ridgelines.

Public Recreation Purpose of Dedications.

In approving the amended permit in 1980, the Commission required the dedication of public parks to protect land from grading and development and to mitigate the demand that this new development would put on existing coastal and mountain recreational facilities. As it first considered this project on appeal in 1979, the Commission received testimony concerning the existing use of the land for trail access to the mountains and its value for habitat and public views. (Exhibit 25, letter received during consideration of A-381-78) In its 1980 action, the Commission considered the impact on roads for the development and required parks to be dedicated within the subdivisions for the public and to provide onsite recreational facilities to serve the development. In approving the amended project A-381-78A in May of 1980, the Commission found that:

> "The major issues in its previous action (July 1979 (*sic*)) were the density of the project as it affected the traffic impact on access to the coast, the extent of grading and alteration of natural landforms as it affected scenic habitat and recreational resources and the provision of housing opportunities for persons of low and moderate incomes. … Approval of this amendment authorizes an increase in the number of units …in all cases the balance of the 968 acre Phase II site would be either dedicated as open space or dedicated for park purposes." (Revised Findings, 1980 Exhibit 20)

The Commission imposed conditions to limit the build-out in order to reduce traffic impacts and to preserve watershed land intact. However, once it had required deed restrictions in order to preserve the hillsides from future development, the Commission required that the

land be dedicated in fee to a public agency. The identified recipient was the State Department of Parks and Recreation. The permit was later modified to allow dedication to the City of Los Angeles also. The findings further explained the purpose of the dedication, and indicated emphatically that the purpose of the dedication was to provide public land for "public recreational use" (Revised Findings A-381-78A, p.8.) The original permit, which runs with the land, required in two separate conditions, 1) dedication of land outside the urban limit line in fee to a public agency and 2) restriction of the use of that land to open space and park purposes. Based on the clarification in the findings, and given that the land was dedicated to a *public* entity (and the only use allowed, except for open space, was as a park) the only allowable use of the land, except for open space, is as a *public park*.

Documents indicate that the land was dedicated for park purposes. In 1981, the applicant recorded a deed restriction limiting the use of several parcels, including Parcel A, Gateway (the subject property) to public recreation. Palisades Resources also recorded a second document offering to dedicate the land to the California Department of Parks and Recreation and, failing acceptance by the Department of Recreation and Parks, to the City. In 1981, The City adopted Ordinance 155203 allowing it to accept the land for park or recreational purposes (Exhibit 16). According to the City, the offer to dedicate Parcel A to the City stated:

> The above grant is made and the real property herein described is dedicated for the purpose that the real property herein described be used either for public park purposes or for open space purposes and for no other purpose or purposes whatsoever. By acceptance of this dedication grantee shall be deemed to covenant with grantor to use the real property herein described solely for park purposes or for open space purposes. Such restriction shall be a covenant running with the land hereby dedicated.

As noted above, the City Department of Recreation and Parks has provided evidence that it accepted this land on January 10, 1989.

The protection of steep land was one other purpose of both the Commission's 1979, and its later 1980 action. The intent of the underlying permit was to protect the sloping watershed land from all grading and open the steeper slopes only to low intensity uses. However, it did make an exception for public park use. Significant public use is required to satisfy the Coastal Act requirements for public access and recreation, as the Commission recognized in 1980 when it imposed deed restrictions applicable to the site and established the following restrictions:

(a) "Prevent further division of such dedication parcels for any purposes except for park purposes outside of the Urban Limit Line.

(b) Prevent development outside of the Urban Limit Line except as permitted by this permit or for park purposes,

Finally, the Commission addressed traffic impacts on coastal access routes, attempting to incorporate commercial uses, park land and one institutional site, the present church, into the development to reduce external trips by the new residents.

The Commission based its action on Sections 30210 and 30223 of the Coastal Act, which require maximum public access and recreational support, and in addition, Sections 30230 and 30231, which protect watershed land, streams and water quality, Section 30240, which protects sensitive habitat, and finally Sections 30250 and 30252, which require the Commission to review the location and intensity of development with respect to its impacts on public access. This prior history establishes two tests for approval of a permit on the land subject to A-381-78 as amended. The first test, as always in the coastal zone, is consistency with the Chapter 3 policies of the Coastal Act. However, land that was subject to this permit that also lies outside the Urban Limit Line also carries significant pre-existing restrictions. In this case it is public park land that is also deed restricted to limit subdivision, development and grading. (Complete adopted findings attached, Exhibit 20.)

C HISTORY OF THE PRESENT APPLICATION.

On June 20, 2000, the applicant's representative, Shannon Nonn, provided the staff with grading plans for "the recreation field w[ith] parking." She left a note (Exhibit 22) requesting the staff to review the plans and approve them administratively: "Please review. I am trying to get a grading plan approved. I am in plan check, but know it will need a coastal sign off. I will see you Tues[day] at 3:30."

Under the scope of permit A-381-78, as amended, the Commission had granted a very broad authority to staff, delegating approval of detailed grading and construction plans to the staff:

> "Conditions on this approval require the applicant to construct an emergency access road south from Tract 31935--to the southerly boundary of the applicant's property (adjoining the AMH project site), provide 100 units of low and moderate cost housing (especially for the elderly and families), to dedicate title to between 1067 and 1180 acres (depending on the final grading and tract boundaries) for public park purposes, and to vacate easements for road extensions through Topanga State Park. The Commission recognized that the four tracts are proposed for development in an integrated development plan. **Thus the Commission has issued a single permit authorizing all development (except as specified) necessary to complete these four tracts and does not intent that the applicant or his successor return for further permits, except for construction [of] the commercial and institutional**

> **structures or the Gateway. Minor changes in design or unit which have no adverse affect on Coastal resources and which do not conflict with this approval, will be approved administratively by the Executive Director.** Like all major land development projects, the project authorized by this permit will proceed in at least four major stages (one for each of the noted tracts). The conditions require perman[en]ce of stated obligations (dedications, construction of facilities) phased with the development of associated tracts. However it is the intent of this Commission that this permit be considered a comprehensive and final approval, and not be voidable once any portion of the approved development is undertaken unless the applicant fails to comply with the conditions. As the development plan is integrated, so are the dedications required by the conditions. For it is only with the dedication of these lands for permanent preservation of visual and landform resources and for public recreational use that the Commission can find the development of the four tracts on balance most protective of significant coastal resources. The dedication of these lands also provides a conclusion to the issue of continuing development in the area. With the approval of this amendment with the dedication of open space areas outside the last four tracts, the Commission and the applicant have achieved a compromise beneficial both to the public and to the developer, resolving once and for all the major Coastal Act issues of location and intensity of development, traffic impacts, amount of grading and provision of low and moderate cost housing. Therefore it is intended that once any portion of the permit is exercised or any offer dedication made, that the entire development and dedication plan proceed to completion as expeditiously as possible." (Source: Revised Findings, A-381-78A, 6/4/80, page 8; see Exhibit 20)

Staff met with Ms. Nonn and explained that administrative approval of the plans that she had provided exceeded the scope of the authority of the Executive Director under the permit. Any work outside the scope of the permit would require an amendment to the permit. In January 2001, the applicant submitted the present request as an application for an amendment to A-381-78. On January 26, 2001, upon review of the amendment application, the staff determined that the project would undermine the intended effect of the existing permit because, among other reasons, it would 1) create a private park on public land, and 2) extend grading past the urban limit line established in the underlying permit A-381-78, as amended, to protect landforms and habitat.

However, on February 7, 2001, the applicant's representative, Mark Allen, urged the Commission staff to reconsider, citing community support and the scarcity of playing fields in the area, and raising procedural and substantive legal arguments. Mr. Allen's letter stated that, "if reconsideration is denied, we will appeal the decision for consideration by the Commission." Upon further review of the special condition that established the Urban Limit Line, and the adopted findings, the Executive Director determined that even though the proposed project would extend grading outside the Urban Limit Line, the extension could be

allowable if the grading and development outside the Urban Limit Line were for park purposes. Since the application could properly be regarded as a new permit application as well as an application for an amendment, staff decided to treat it as a new permit application, and that treatment continues to govern the form in which this application comes before the Commission now. Although this application is styled as a new application for a permit in this staff report, it remains the case that approval of this request would in effect amend the prior permit. Therefore at the end of each section analyzing the consistency of the request with Chapter 3 policies of the Coastal Act, this report also addresses the reasons why the application would also be rejected if it were treated as an application for an amendment.

When staff determined that the project was an amendment of the underlying permit, no locally issued coastal development permit was necessary, since the Commission has jurisdiction over amendment to its own permits. When staff agreed to accept the application as a coastal development permit, this presented a problem because the City had not issued a coastal development permit under Section 30600(b), which was its right. The applicant requested that staff waive the initial City approval of a CDP.[3] The reasons were 1) The applicant had already obtained a Conditional Use Permit from the City of Los Angeles Associate Zoning Administrator. 2) The applicant had already received approval of a Shared Use Agreement from the City of Los Angeles Board of Recreation and Parks. 3) Both City agencies had held duly noticed public hearings at which extensive testimony was heard. 4) A local CDP would be appealable. 5) If staff determined that the project was inconsistent with a prior Commission action, the Executive Director would appeal the locally issued coastal development permit. In other words, the applicant would have spent six months processing a Coastal Development Permit from the City and would still need to receive concurrence from the Commission. Although informed that they should have applied for a coastal development permit from the City, the applicant's representatives stated that the project had received a Conditional Use Permit from the City and decided that it would save time and effort to go forward with this request at the Coastal Commission. Now, upon treating it as a new permit application, it could go back to the City for a locally issued coastal development permit. However, there is a provision in the regulations allowing the Commission to hear the matter and then after a decision to refer the matter back to the City for its consideration, if the City deems such consideration necessary. Although the City processes most initial permit applications itself pursuant to Coastal Act Section 30600(b), because this came to the Commission originally, and because staff is unaware of any City opposition to the Commission waiving a local coastal development permit in view of the extensive prior City hearings on this matter, the Commission is retaining it.

On that basis, after the applicants provided some new information necessary to analyze the request, the application was accepted. Necessary information required before considering the application complete included documentation of the transfer of title of the required open

[3] The City of Los Angeles has opted to issue coastal development permits as authorized in 30600(b).

space land from the developer to the City. The application was accepted and deemed complete on April 12, 2001. The co-applicants in the case include Calvary Church and the City of Los Angeles Department of Recreation and Parks.

D. APPLICANTS' PROPOSAL

The applicants propose to construct a 32,400 square foot 165-foot long sports field on the slope adjacent to Calvary Church and school and erect a four-sided 440-foot long, variable height, (23-foot maximum) retaining wall. The segment of the wall located at the base of the hill would be 278 feet long (Exhibit 3). The applicant also proposes to relocate 33 existing parking spaces on Calvary property, and grade 16,400 cubic yards. The applicant's church and school lie in the bottom of Santa Ynez Canyon on about seven and a half acres on the western side of Palisades Drive, north of Sunset Blvd. (see Exhibits 1 and 2). West of the school, there is a 400 foot high 1.5:1--2:1 slope that lies on a 107.23-acre parcel of the park dedicated as a condition of the underlying Permit A-381-78A. The applicant proposes to notch the sports field into the hillside, and extend it over the present school parking. The field would be elevated about five feet above the existing driveway. The hillside would be supported by a retaining wall. Thirty-three (33) of the 34 parking spaces lost because of the project would be replaced adjacent to a driveway on a previously graded area on Calvary's own property (within the Urban Limit Line.) Much of the grading and the lowering of the height of the field is a result of conditions imposed by the City of Los Angeles to protect views from a 75 unit condominium (also approved in the underlying Permit A-381-78A) that is located on the east side of the canyon. The applicant proposes no extra parking for the playing field, noting that it would either be used by the school or by others after school hours.

Fifteen thousand square feet of the sports field, the 278-foot retaining wall at the base of the hill (the highest segments,) portions of two shorter retaining walls along the sides of the field, the cut slopes, the brow ditch, the energy dissipaters and most of the vegetation removal would extend onto a previously ungraded hillside that is a dedicated public park. The hillside supports habitat, although the value of the habitat within 200 feet of the school building has been reduced by fire clearance.

When the applicants submitted the application, they indicated that the playing field would be a privately operated field that would be available to certain specified groups a limited number of times a year. When Commission staff questioned whether a private field could be considered "low intensity public recreation " or an appropriate use for a public park property, the representative of the Calvary responded (1) the deed restricitons applied only to the original developer, (2) The City found that this was an appropriate use of park property and the shared use agreement represents a long term but not permanent determination by the City that this is an appropriate use of its parkland at this time. (3)"

[T]he original developer … was restricted on its use of property subject to certain exceptions including an overall proscription on development outside the ULL that the parcels were to be dedicated outside the ULL for park purposes. Nothing in the dedication to the City restricts the City from using the City park land for a park nor leasing such land to a third party for such park use. … Hence it is the City not the Coastal Commission which determines whether park land is being used for park purposes. " Mark Allen, letter, February 7, 2001. The City did not respond, but did begin to examine its record.

E. PUBLIC ACCESS AND RECREATION.

The Coastal Act provides for maximum access to coastal resources for all the people of the State. It provides for protection of public recreational opportunities. The conversion of public recreation land to a privately operated park, with limited shared use, raises significant issues with Sections 30210, 30212.5, 30213, 30223 and 30252 of the Coastal Act as well as issues of consistency with the Commission's previous actions on the underlying permit.

Section 30210 establishes the Commission 's responsibility to provide maximum access to all the people.

> **Section 30210.**
>
> In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212.5 encourages a widespread distribution of access facilities.

> **Section 30212.5**
>
> Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 establishes the Commission's responsibility to provide public recreational facilities.

> **Section 30213**
>
> Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223 encourages the reservation of upland recreational facilities.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30252 requires that new development be sited and designed to reduce traffic impacts and to improve and protect access to the coast:

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The project before the Commission is an urban park for active recreation. It cannot be constructed without grading into the hillside. The Commission has received testimony in correspondence received regarding this permit that playing fields are limited in the Los Angeles Basin. The Commission notes that it has limited ability to trade off the protection of watershed and habitat for public access. If it were to consider balancing the need to provide recreation to the general public with the need to protect landforms and habitat, there is little in this proposal to support its decision because the park is not proposed to serve the general public. In order to approve a park in a habitat area, the Commission would also need to consider whether a public park could be accommodated elsewhere or in a manner that would not cause impacts to habitat.

About half the proposed playing field would be located on land that is dedicated and accepted as public park land consistent with the Commission's earlier action. As noted above, the City Department of Recreation and Parks has provided evidence that it accepted this land on January 10, 1989.

In 1999, one of the co-applicants, Calvary Church, approached the owner, the City of Los Angeles Department of Recreation and Parks, with a proposal to use what Calvary viewed as vacant City land that lay adjacent to its site. Calvary proposed to develop the site with a playing field for its associated school. Discussions with neighboring property owners and with other youth groups such as the American Youth Soccer Organization (AYSO) ensued.

When it considered the terms of the proposal, the staff of the Department of Recreation and Parks (DRP) received objections from neighbors concerning: 1) the potential noise of a playing field, 2) the lights from a playing field, 3) traffic and parking conflicts, and 4) the visual impact of a large flat field as seen from the condominium on the east side of Palisades Drive. The Associate Zoning Administrator heard similar objections when she considered the Conditional Use Permit (Exhibit 23).

These and other concerns are reflected in conditions of the Shared Use Agreement and also in the conditions of the Conditional Use Permit. The Shared Use Agreement specified that certain identified local youth groups could use the field a limited number of afternoons each year, and that a local Cub Scout troop could use the field for three one-week long events each summer. The conditions also allow "City sponsored" events or practices. However City -sponsored groups are limited to six days a year, require advance notice to neighbors concerning the scheduling and identity of any "City -sponsored" groups, and require that if there is a conflict between groups requesting to use the field, groups from the Pacific Palisades should have preference. The six days of use for events or practices are limited to youths under the age of 15. (Agreement, para. 5B.) (See Exhibit 10.)

The agreement between Calvary and the City states that all users of the field must comply with Calvary's rules and regulations for use of the field. (Agreement para. 5.A.6 and 5.B) (Exhibit 10). However, neither the agreement nor the permit application states what Calvary's rules and regulations are. The agreement requires Calvary to allow only six days per year for City-sponsored events or practices, "if no school activities are anticipated for the requested date and time" and if "the requested use does not otherwise conflict with Calvary's enjoyment of its property and the field." (Agreement para. 5.B). There is nothing to prevent Calvary from scheduling activities during all non-school hours and thereby precluding the "six events or practices" for other youth groups referred to in the agreement with the City. The agreement with the City does not allow any use by the public, or other organized groups, during January, February, or March except at "the sole discretion of Calvary." (Agreement para. 5.A.5). (See Exhibit 10.)

Apart from the "six events", the agreement allows use on Friday evenings in April, May and June from 4 to 6 p.m. by YMCA youth soccer league; and on Friday evenings in November and December by AYSO region 69 "K" league from 4 p.m. to dark. (Agreement para. 5.A.1. and 5.A.3). The agreement also allows use of the field two Saturday afternoons each year by Cub Scout packs only from the Pacific Palisades community. (Agreement para. 5.A.4). The agreement also states that if one of the groups authorized to use the field fails to comply with Calvary's rules, Calvary may substitute another group. (Agreement para. 5.A.6). Finally, the Agreement gives Calvary the right to modify the specified uses in paragraph 5.A. of the agreement with the City, if they conflict with Calvary's private use of the field, and requires that Calvary endeavor to find some other time when the use can be accommodated that does not conflict with Calvary's use. (Agreement para. 5.A).

Therefore, it appears that none of the specified public uses in the agreement are guaranteed, but rather, that Calvary could expand its non-school use of the field so that little or no other times are available for other groups. On October 6, 1999, the Board of Recreation and Parks approved this agreement conditional upon Calvary receiving all necessary approvals[4] (Exhibit 10.)

Calvary justifies its near exclusive use of the land saying that the public would be served by "freeing up" demand on the other local park, Palisades Park, where the Calvary School team now practices. City staff notes that the entire City is deficient in playing fields, and that the City would get some use of this playing field without the expenditure of City funds (Exhibit 30, letter from General Manager.) The developer of the underlying project Headlands/Pacific Highlands development, dedicated 25 acres of land to the City as its Quimby requirement, which accommodates a debris basin and some steep land. As a result of both the City's and the Commission's open space and recreation requirements the City obtained a total of 475 acres. However, none of this land is suitable for an urban park. Much of the dedicated land is too steep to develop with playing field or recreation centers without extensive grading. There are informal trails throughout the park. On this part of the City's property there is an informal trail leading up the creek from the church access road to a small meeting area with benches arranged under the trees.

The City does have other models for shared use (Exhibit 12). In those models the City has developed parks on school property in exchange for being able to operate supervised parks that are available for use by the public and/or organized groups during non-school hours. City contracts give City staff the right of access to telephones, and require that restrooms be available. They require that City staff have keys to an office. Calvary's representative states that Church officials have discussed these issues with the groups that they have identified to share the facility. At the Calvary site, there is a restroom accessible from the driveway and a pay telephone that can be made available to people using the field. The restroom is normally locked. However, availability of these restrooms and telephones are not part of the City's contract with Calvary or required in the shared use agreement between Calvary and the City. The City objects that these models are not comparable because Calvary is paying for this development, and in those other cases, the City also paid a portion of the development costs (Exhibit 30, letter of the General Manager. Recreation and Parks.)

As proposed, the project does not provide recreational opportunities for all the people consistent with public safety needs and therefore violates Coastal Act section 30210. The project also does not provide recreational facilities to serve the development, the four

[4] On January 28, 2000, the Associate Zoning Administrator approved the conditional use permit for the project. In addition to standard City conditions for hillside development, the Zoning Administrator imposed nine conditions dealing with view protection and noise and traffic impacts to the neighborhood and adopted the Board and Recreation and Parks agreement by reference." (Exhibit 23.)

Headlands tracts, which the dedication of the land was required to mitigate under Section 30252. By virtue of the proposed restricitons only a fraction of the population of either the development, the City or of the State of California would be eligible to use the land that was required to be dedicated to the public.

Moreover, this land is not only watershed land; it is land dedicated for a specific purpose, public use, by the Commission's own action. In order to consider any kind of park proposed on land required to be dedicated under Section 30210 of the Coastal Act; the Commission must first find that the park is a public park and provides maximum access to all the people of California. The park must be public. A public park, by definition is open to the public. The Commission cannot approve predominantly private use of public parkland that was dedicated to the City as a result of the State's action on the underlying permit. In order to find that the intended use of the field is a public park, the public must have significant and frequent access to the land, and the land must be open to all members of the public.

The amount of public use proposed by the applicants is not adequate to determine that the field is a "public park" because it reserves the field for primarily private use by Calvary Church. Secondly, the City condition granted priority to children in a specific neighborhood. Additionally, the City is allowed to use the property for other youth groups only 6 days a year. However, those groups may not have members over the age of 15. While as a matter of practice, children's groups from nearby neighborhoods would be the most likely to request to use the field, the Commission cannot find a rule that explicitly grants priority to groups from one neighborhood of Los Angeles and does not include groups from other neighborhoods in the City, or even from neighboring cities, consistent with Coastal Act policies. Pacific Palisades neighbors argue that fields are in short supply. In fact, playing fields are in short supply City-wide. The Commission finds that in order for it to find that the field is a public park and that the use is consistent with the Coastal Act public access and recreation policies, as interpreted in its prior action, the field should be available to anyone (during reasonable hours), on a first come, first serve basis, when its not being used by Calvary or by an organized group authorized by the City. Moreover, nothing in the Coastal Act or the Municipal Code would allow use of a City Park only by neighborhood groups, excluding others. Given the Church's stated inability to accept such restrictions, the Commission has no choice but to find the proposal simply unapprovable.

The Commission finds that it has approved parks in other areas that required limitations and/or supervision due to the type of use proposed. Most recently, it approved a skate park in Venice for one of the applicants, the City of Los Angeles Department of Recreation and Parks. In that case, the Commission imposed and the City accepted a condition requiring that the City open the park to all groups throughout the City.

In accepting the present application, the Director acknowledged that part of the purpose of the dedication of park and open space lands under 30252 was to provide recreational

facilities to serve the new development. However the Commission also indicated in its findings that the use envisioned for the recreational land was for a public park. The Commission finds that the proposed use is not a public park. If the Commission's underlying permit condition and the deed restriction allow "limited" grading for park purposes, the purpose of the grading must be for a park. There is no indication in the record that the Commission understood the word "park" as meaning anything other than a public park in the most conventional meaning of the word. If the land is restricted as proposed it is not a public park and the application must be denied.[5]

Development on dedicated parkland as a private sports field, that allows only a very limited amount of public use, is not consistent with the Commission's prior actions or with the Coastal Act. As proposed, the project is not a public park and is inconsistent with the public access and recreation policies of the Coastal Act Sections 30210, 30223 and 30252 of the Coastal Act, which provide that development shall provide maximum access, as well as with the purpose of the dedications, the recorded deed restrictions, and the underlying conditions applied to the subdivision, and must be denied. :

F. VISUAL IMPACTS -- LANDFORM ALTERATION

Sections 30251 of the Coastal Act states:

> **Section 30251**
>
> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The Coastal Act requires that public views and natural landforms be protected. The natural landform in this instance is the ungraded hill that rises 400 feet above Palisades Drive, which was constructed along the bottom of a Canyon. To a driver along the road, the buildings are dwarfed by the canyon sides, which are covered with chaparral, with its

[5] The law is well-settled that an illegal contract is void. As such, it cannot be ratified by any act or declaration, and no person can be prevented from challenging an illegal contract's validity. Thus, to the extent the contract between the City and the Church violates the Coastal Act or a permit (and its conditions) issued pursuant to the Coastal Act, or any other applicable law such contract is illegal and void for as long the permit and its conditions are in effect.

characteristic gray-green color. Many of the ridgelines north of the project are publicly owned, and provide views from ridgeline trails of the canyons and higher ridges that lie farther north. The Department of Parks and Recreation has purchased many of these ridgelines in the last 25 years. A trail from Los Liones Canyon park, that lies to the south of this project, and also obtains access off Sunset Boulevard, climbs up Los Liones Canyon to the ridge, where it meets a spur form a lower knoll. It is possible to walk along public trails and see the "Gateway," lower Santa Ynez Canyon, Palisades Drive, the church roofs and the Searidge condominiums that are all located along the former stream channel.

This project is located on land called the "Gateway," the relatively narrow part of Santa Ynez Canyon. The slope rises 400 feet above the parking lot behind the church, which is itself elevated at least 20 feet above Palisades Drive, the road that goes up Santa Ynez Canyon. The hillside provides a backdrop for the Church and is visible from Palisades Drive and from a 75-unit condominium approved in permit A-381-78A. The hillside is covered with chaparral. At the top of the hill, which is a lateral ridge extending toward the coastline from Temescal Ridge, there is a paved street and a number of homes on ridgeline lots that were created prior to the Coastal Act.

The testimony at the City hearing on this matter concentrated on impacts on views. Residents of the other Gateway development, a 75-unit condominium on the eastern side of Palisades Drive, objected to the playing field because it would be visible from their units and would displace views of a natural hillside from their units and from Palisades Drive. In response, the City required the present applicants to lower the level of the field so that it would be hidden behind Calvary from the condominium residents, and incidentally from travelers on Palisades Drive, requiring the applicant to cut about 16,000 cubic yards from the toe of the slope. The purpose of the condition was to protect the views from the condominiums across the street, hiding the field behind the existing church and school buildings (Conditional Use Permit Exhibit 23). The applicant is proposing a variable height retaining wall to support the slope and buttress fill at the hillside edge of the field. While the wall would vary from ten to 23 feet above grade, the debris wall would add another three feet to that height. The City determined that the wall would be visible to some degree, and required appropriate colors and that the applicants cover the wall with vines. However, coverage from vegetation would be limited: The debris wall must be regularly cleared to be effective – a mat of vegetation would not be allowed to accumulate behind and over it.

In response to concerns about invasive plants, the applicants propose that they would use plants that are not invasive in hillside areas, such as *Bougainvillea*, which would contrast with the color of the native hillside vegetation, but which is not invasive.

Calvary Church is 50 feet above finished grade, and the school is 42 feet above finished grade. The heights of church and the school exceed the height of the retaining wall. It is unlikely that the field or the wall would be visible from Palisades Drive. Some of the wall

would be visible to residents of Searidge, the condominium across the street. There would be no visible cut slope above the field. The wall varies in height—it is 23 feet high only a very small portion of its length. It would be possible to impose conditions on this development to minimize visual impacts from Palisades Drive

However, there are public trails that go along a ridge within Topanga State Park on the ridge above this development. The Church and portions of the field would be visible from some of the trails leaving Los Liones State Park as they reach the ridgeline. While other urban development is also visible from those trails, the field would be another manufactured element in the view shed of the State Park and of the public trails. The school and church would not mask the view of the field from the trail.

Absent other issues, at its proposed elevation, screened by the Church, and with landscaping that is visually consistent with the chaparral on the natural hillside, the project could be made more visually compatible with the surrounding hillside, consistent with Section 30251 of the Coastal Act. It would still raise issues with respect to impacts on public views and Section 30251, as it requires protection of natural land forms. The project is also not consistent, with previous restrictions imposed to protect natural land forms.

G. SAFETY OF DEVELOPMENT

A second reason to leave natural landforms alone is to assure the safety and stability of development. Cutting at the toe of a 400-foot high hill in the Santa Monica Mountains can result in collapse of the hill. The rocks in the hillsides are sedimentary rocks of varying strength. Slope failures are common. Any grading at the toe of a very high slope can be hazardous because it can remove the support of the slope.

Section 30253 states in part:

> New development shall:
>
> (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The general area has been subject to landslides. Landslides occurred on several occasions during and after the development of the underlying project. A major slide blocked Palisades Drive in the late 1980's. A slide during construction of Tract 31935 buried an archaeological

site and required 1.5 million cubic yards of grading to repair. Later, in response to the history of landsliding, the City required the developer to remove sediments that were perched up near the ridge line and which might impact the development in Tract 32184, and to construct a buttress fill. Finally, the retaining wall supporting the 75-unit condominium development located across the street from this project failed during construction. The developer was required to replace the wall with a new, redesigned wall.

In rejecting the earlier application for amendment, staff expressed concern that cutting into the toe of the hillside could represent a hazard. In response to these issues, the applicant provided a geology report concerning the proposed playing field and the land inland of the playing field. The consultant states that a buttress fill and a wall at the toe of the slope would allow the cut that is proposed at the toe of the slope to occur without jeopardizing the safety of the hillside. City geologists approved the report but required a waiver to indemnify the City in case of slope failure or debris flow.

The hillside is located north and west of the field. In a geology report prepared in support of the project, the geologist, GeoSoils Consultants, identified slopewash, colluvium, and Martinez formation sedimentary rock with a southwest tending dip. The report concluded that natural slope range from the gradient of 1½: 1 to 2:1 (horizontal vertical) with total vertical height up to 400 feet. A slope stability analysis was performed on the slope. The results, as presented, indicate a factor of safety above minimum code values (Exhibit 11).

> 6.2 debris containment. The City of Los Angeles approved report dated December 10, 1981 recommended that a 20 plus foot structural setback be provided from the toe of slope. The setback consists of the existing 20-ft roadway that extends along the west end of the project site and serves as the catchment and drainage area for any debris or runoff accumulating from upslope areas. The construction of the proposed sports field and parking area retaining wall essentially creates a larger containment area for the debris or runoff accumulation. Also no occupancy structures are proposed.
>
> We recommend that the backfilled retaining or shoring walls constructed the toe of the slope have a minimum freeboard of six inches to prevent nuisance slope materials from topping over the wall. The freeboard portion of the wall, which will serve as an impact wall, should be designed with an equivalent fluid pressure of 125pcf. In the event of a larger debris flow or runoff, the material will flow over the wall and into the enlarged containment area (i.e., sports field and parking area). (Geosoils)

The City geologist approved this report and the wall, the buttress fills and drains that were proposed. The first condition of the City report is what is commonly known as a slide waiver. The City approval states, in part:

> "The proposed improvements are in an area that has been designated as a debris containment area. Approval to use the parking area for potential debris containment was provided in the referenced request for modification.

The City required a three-foot minimum debris wall on top of the retaining wall to protect players on the field or visitors in the revised parking area from mudflows. The 23-foot high retaining wall described throughout, as staff understands it does not include the debris wall, resulting in a structure that will be as much as 26 ft high.

Staff reviewed the report and the Commission senior geologist requested some additional information, regarding stability and bedding planes. The applicant provided supplemental information, correcting some errors of nomenclature. After analyzing both reports, the senior staff geologist wrote:

> The revised set of slope stability analyses demonstrates that the slopes above the proposed development will be grossly stable. The presence of extensive slope wash deposits indicates that they are subject to periodic debris flows and/or rock fall, which could pose a hazard. In my opinion, this hazard will be adequately mitigated against by condition of the City of Los Angeles, Department of Building and Safety letter of 10 July 2000. As pointed out in that letter, the proposed development is in an area that has been designated as a debris containment area. Accordingly, maintenance of the debris fence and the periodic removal of accumulated material will be necessary. I recommend that such maintenance be attached as a special condition to any Coastal Development Permit issued.

Recommendations regarding the design of the retaining walls and grading have been provided in several reports and letters submitted by the applicant, as referenced in the above noted final reports.

If the Commission were approving this project it would require that Calvary record an amendment to the Joint Use Agreement whereby the City and Calvary Church each assumed the risk of extraordinary erosion and/or geologic hazards of the property and acccepts sole responsibility for the removal of any structural or other debris resulting from landslides, slope failures, or erosion onto and from the site. The Commission would also consider a condition to assure the maintenance of the debris wall for the life of the field approved in this project.

One reason the Commission originally imposed an Urban (grading) Limit Line on the project was to minimize risks to life and property consistent with Section 30253. The Commission opted for a strategy of avoidance of potentially hazardous sites, instead of a strategy of

demonstration that each site was safe on a case by case basis. The staff initially rejected this project when it was presented as an amendment application because it involved landform alteration on deed restricted land outside the Urban Limit Line established in the underlying permit.

The Commission often approves development in inherently risky areas if there is a design to mitigate hazards and if the owner can assume the risk if the site fails. The Commission follows this strategy (an investigation, a design and an assumption of risk) when the danger is debatable or can be mitigated and where the owner claims that without this compromise he or she would be deprived of the use of his or her property. In this case, this compromise is not necessary. The private church property is safe. The Commission approved a reasonable use in the original permit. A large church and a school, and a small playground already exist on the church parcel. The grading would occur on public property that already has a use, public open space and habitat. In this case, the land subject to most of the cut is already publicly owned and reserved for open space. There is no need to approve the grading in order to assure that a person can use his or her land.

The Commission finds that there are potential geologic safety issues in this project, but they have been addressed in the engineering of the project. It would be possible to find the project consistent with Section 30253 as it addresses safety, if an assumption of risk and a requirement to maintain the wall were imposed as conditions of approval. However, the Commission finds that the safest course is to refrain from the landform alteration, a course that is consistent with its prior action and with Section 30253 of the Coastal Act.

H. RUN OFF AND EROSION CONTROL MEASURES

The applicant is building the field out over a 34-car parking lot and installing a new 33-car parking lot. Runoff from parking lots is a major cause of stream and ocean pollution. During construction, it is possible to use sandbags and other devices to reduce the amount of pollutants in the runoff, which would also reduce the number of pollutants entering the Santa Ynez Creek drain and the ocean. The applicant has submitted a drainage plan that includes permanent erosion control measures. If it were to approve the project, the Commission would require a complete erosion control plan for both permanent and temporary measures, addressing both siltation and waterborne contaminants from the driveways.

One of the side effects of increased hardening of hillsides as proposed here, is that there is less sand reaching the beaches. The gradual and episodic sloughing of natural vegetated slopes delivers relatively clean sand, in incremental quantities to the shoreline. Run-off from grading projects or collapsing road cuts can overwhelm coastal streams and tide-pools. Moreover natural sloughing and slides more often occur in the rainy season, when the

system is flushed with storms and rainfall. Silt deposited in a summer stream cannot wash out or disperse onto the beaches and impacts habitat. The Department of Fish and Game attributes the diminished populations of some amphibians and the loss of some offshore resources such as kelp and some shellfish to siltation due to grading projects.

As noted in the June 2001 staff report, it would be possible to condition the project so the project would not contribute to pollution and impair water quality. However, any project that includes significant grading raises a greater danger of siltation and damages to streams than one that does not. However, if the project were otherwise approvable, it would be possible to impose conditions that would assure consistency with the marine resources policies of the Coastal Act. However, the project is not consistent with the deed restrictions and special conditions of the underlying permit, A381-78.

I. NATURAL RESOURCES AND HABITAT

Section 30240 of the Coastal Act requires, among other things, that new development shall not have significant adverse effects on coastal resources. It states:

> **Section 30240.**
>
> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
>
> (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30230 of the Coastal Act requires that marine resources shall be maintained and states: "Special protection shall be given to areas and species of special biological or ecological significance."

> **Section 30230**
>
> Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.
>
> **Section 30231**

> The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The hillside behind this proposed playing field is covered with chaparral and coastal sage scrub, a natural community that has lately begun to be appreciated. The hillsides, with their natural cover, allow water to slowly percolate into the ground and to sustain natural streams. Some coastal sage scrub supports endangered species. In the Santa Monica Mountains near highly developed areas like the Pacific Palisades, it no longer does so. Nevertheless, coastal sage scrub is valuable even where it does not rise to the value of ESHA. This canyon supports a number of plants and animals, including a mountain lion and hawks. Extending the line of grading and development and of intense human use farther into this area would impose additional stress on the habitat and additional conflicts between human needs and the need of the habitat.

This project is within and adjacent to a park. It is adjacent to a streambed, and the toe of the grading would be very close to the stream extending over and beyond the lip of the gully in which the stream lies. Most of the area that is identified for the playing field has been severely and frequently cleared for fire protection purposes. Even so, a cluster of walnuts and some established native shrubs remain. Replanting the area with grass would commit the area to introduced plants and a water pesticide and herbicide regime that is inconsistent with maintenance of chaparral. However, the grading proposed extends beyond the presently disturbed area in two or three locations, (up to 220 feet from the wall of the school), which is more that is cleared at present.

In seeking a coastal development permit for the work described in this project, the applicant had a vegetation survey prepared. On the applicant's property, the surveyor found only grasses and weeds. However, on the City property outside the Urban Limit Line, there were established, if stressed, native shrubs and a cluster of four mature walnut trees, constituting the remainder of a walnut woodland, a form of habitat that is increasingly rare in California. The streambed has also been "raked" and cleared. Because of impact by fire clearance, the report discounted the value of the habitat even on the City property but did indicate that walnut woodland, like many other assemblages of native plants are increasingly rare in California. The land up and above the fire clearance area is quite healthy, according to the applicant's consultant and to the staff ecologist.

The applicants' report distinguishes the plants found on the applicant's site, which were characterized as "remnants of the original plant community on the site." from the plants outside the Urban Limit Line, characterized as "the City property adjacent to the site." It stated

> "Vegetation on the City property adjacent to the project site is a likely indicator that prior to disturbance the site could have been most closely characterized as California walnut woodland (Sawyer, 1995) the nature conservancy habitat program rank for this community is S-2.1. (Sawyer, 1995) This ranking indicates the community has less than 10,000 acres present statewide and is considered very threatened." The specific nature of the California walnut woodland on this site is characterized by a lack of large trunk diameter trees, an overstory height of approximately 15 feet, and a fairly even mix of four shrub tree species, California walnut, *Juglans californica*, Coast wedgeleaf ceanothus, *Ceanothus cuneatus fasciculariі*, Toyon, *Heteromeles arbutifolia* and Lemonade Berry, *Rhus integrefolia*. Mexican elderberry, *Sambucus mexicana*, is also present in some numbers. The understory is largely absent, due to the prolonged absence of fire and dense growth and shade from the dominant continuous over story.
>
> There is a small detention basin adjacent to the site to the south. …Upstream of the detention-desilting basin is a grove of mature Coast live oaks along a small drainage course. The oaks form a continuous overstory. This area shows evidence of raking and regular maintenance, although significant leaf and branch litter was present. The understory of the oaks included poison oak, *Toxicodendron diversilobum*, Black berry, *Rubus* sp., Soft chess, *Bromus* horaceus, Purple sage, *salvia leucophillia* and wild cucumber. No evidence of wet soils, waterborne debris or obligate wetland plant species was seen. " (See Exhibit 8 for additional material from report)

The report concluded that the site does not have "special value". It recommends that the development should avoid disturbance of the adjacent oaks and the adjacent streambed. It advises that introduction of a non-native invasive plant species adjacent to the native plants in the streambed and the introduction of non-native invasive plant species adjacent to the native plant comminutes should be prohibited (Exhibit 8.)

The Commission staff ecologist visited the site in mid-summer, after fire clearance. He found that within 200 feet of the structures, where either City or the applicants had mowed to soil level, the trees stood in isolated clumps and that there was very little habitat value. On the steeper slopes where the buttress fill would be placed, there is dense brush, CSS habitat. The staff ecologist noted that school personnel had reported a mountain lion on the on the slope behind the school, a sign that the habitat preserved on City property was relatively undisturbed, and connected with other preserved areas in the Santa Monica Mountains. In fact the City property is adjacent to Topanga State Park on the north,

separated only by a thin sliver of landslide that the successor to original developer, Headland Properties has retained, but has not developed. Topanga State Park is part of the Santa Monica Mountains National Recreation Area, which when complete, would form a connected system of undisturbed habitat and public recreation land from Ventura County to the Pacific Palisades (at Will Rodgers State Park into Ventura County and also eastward along Mulholland Drive, encompassing the ridges that surround Los Angeles and the San Fernando Valley.

The streambed is very close to the grading. The grading footprint for the field extends below the lip of the gully that protects the stream. The June 2001 staff report included a requirement recommended by the applicant's consultant to set grading back at least 25 feet from the top of the arroyo/gully that encloses the stream. A site visit revealed that at least at the corner of the field it would not be possible to limit grading to a line 25 feet outside the break in upper slope into the gully. The stream flows into a culvert, where it joins a remnant of Santa Ynez Creek along Palisades Drive. Plants that are found along streams, including oaks and walnuts are termed "riparian." The assemblage is rare in California, although there is a remnant of Santa Ynez Creek at various locations along Palisades Drive.

The applicant does not identify an area in which it would be possible to replace the four walnut trees, the "scrub oak" and the Toyon and the Mexican elderberries that are within the footprint of the field. The trees are found on gently sloping area at the toe of the much steeper main hillside. They are mature trees –the walnuts cover about 700 square feet of land –but not tall and they have small trunks. The applicant has hired a landscape architect, who has provided a landscaping plan that would replant some coast live oaks, but use bougainvillea, a non-native vine and a ceanothus cultivar at the edge of the wall.

The presence of a high occupancy structure at the toe of the slope has resulted in stress to the habitat due to the necessary fire clearance. Extending the line of clearance would remove the stressed habitat that is left. There are other conflicts between human occupancy and habitat. Fire clearance is one conflict. In addition, school employees have observed a mountain lion feeding on the deer that frequent the cleared area. While the applicants assert that the lion would not be interested in large groups of children due to their noise, the Commission finds that extending human habitation farther into the habitat may increase conflicts. Putting a playing field next to a mountain lion habitat could result in pressure to remove the lions.

The Commission finds that the measures proposed by the applicant for streambed protection and replacement of the vegetation of the site are not adequate. The area described as "City property" in this report was dedicated as a park in order to protect the watershed land, which includes vegetation. The project would extend into areas of hillside cover, which have not yet been graded out. It would substitute watered, grass lawn for a somewhat depauperate area remnant of walnut woodland, and it would create an artificial

edge to the natural habitat. . It would extend a hardened edge into relatively healthy habitat and remove more brush. The project would install vines, often invasive, next to habitat and water them, which encourage their growth. It is required by its City Conditions to use herbicides and pesticides to maintain the look of the lawn, a practice that can impact insects. It would increase human activity, often a factor in damage to habitat diversity. All these activities would further stress the habitat area and may not be consistent with its preservation.

The proposed project would also destroy several mature walnut trees, which are coastal resources. The consultant felt that four walnut trees were not enough to find that the area was a special area but stated that walnuts are a species of "special biological or ecological significance" due to their relative scarcity, and therefore are entitled to special protection under Section 30250. The Commission finds that it cannot find the project consistent with Sections 30230, 30231, 30240 and 30250 of the Coastal Act. The Commission finds the project as proposed is not consistent the Special Conditions and deed restrictions that it imposed in its action on the underlying permit A-381-78A

J. LOCAL COASTAL PROGRAM.

Section 30604 (a) of the Coastal Act states:

> Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

In 1978, the Commission approved a work program for the preparation of Local Coastal Programs in a number of distinct neighborhoods (segments) in the City of Los Angeles. In the Pacific Palisades, issues identified included public recreation, preservation of mountain and hillside lands, and grading and geologic stability.

The City has submitted five Land Use Plans for Commission review and the Commission has certified three (Playa Vista, San Pedro, and Venice). However, the City has not prepared a Land Use Plan for Pacific Palisades. In the early seventies, a general plan update for the Pacific Palisades had just been completed. When the City began the LUP process in 1978, with the exception of two tracts (a 1200-acre and 300-acre tract of land) which were then undergoing subdivision approval, and an unstable canyon, all private lands in the community were subdivided and built out. The tracts were A-381-78 (Headlands) and

A-390-78 (AMH). The Commission's approval of those tracts in 1980 meant that no major planning decision remained in the Pacific Palisades. Consequently, the City concentrated its efforts on communities that were rapidly changing and subject to development pressure and controversy, such as Venice, Airport Dunes, Playa Vista, San Pedro, and Playa del Rey. In recent months the City has established an advisory committee to discuss a Local Coastal Program for Pacific Palisades. The committee is discussing issues such as the scale of new development, geologic safety, preservation of public views, water quality and access to and protection of recreational resources.

This project raises issues that may be of concern to the Commission when it addresses the Pacific Palisades Local Coastal Program. Since the adoption of the Coastal Act, public agencies have acquired land in the Santa Monica Mountains through purchase and through dedication during permit actions. Permits A-381-78 and A-390-78 resulted in the dedication of extensive tracts of mountain land in the Pacific Palisades portion of the Santa Monica Mountains. The State of California Department of Parks and Recreation accepted 568 acres as a result of permit A-381-78 alone (Exhibits 28 and 29.) In its acquisition of Los Liones Canyon the Department of Parks and Recreation purchased a canyon and trailhead that gives access to the hillside that overlooks the central portion of Santa Ynez Canyon and would overlook the proposed playing field. Access to these lands is often on fire roads entered at street ends or otherwise close to private residential development. Fortunately many of the trailheads are already protected by conditions of approval in the Commission's issued and vested coastal development permits. In many cases such access is dependent on the enforcement of prior permit conditions. Three trailheads providing public access to Topanga State Park, for example, gain access from residential streets that were subject to permit A-381-78. Preservation of open space lands, trails and trailhead parking in the face of predictable conflict between recreational visitors and the nearby residents, such as the Commission has seen in this case, would raise difficult planning and regulatory issues. The Commission finds that approval of this project as proposed could raise serious difficulties for the City in its efforts to prepare a Local Coastal Program that is consistent with the Coastal Act. Therefore the project as proposed must be denied.

K. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

There are other feasible alternatives or mitigation measures available other than those proposed by the applicants and by the Commission, which would lessen any significant adverse impact the activity, would have on the environment. These measures include the construction of a public park, the enhancement of passive trail use of the area, the opening of a streamside meeting area on City land to the public, the reduction of clearance of riparian vegetation as part of fire control. Calvary can investigate other recreational pursuits that do not require as much land and that do not require grading on dedicated parkland. The are other projects, such as narrow hand ball courts, exercise trails and picnic areas that can also provide public and private recreation and that are feasible. There is other land in the Headlands development that is dedicated for playing field purposes that could be cooperatively developed and would not be located in a school's "back yard." The project would have significant adverse impacts on the environment and would undermine the intended effect of an approved and vested permit –which has benefited the applicant. The Commission has reviewed alternatives and has concluded that the proposed project would have greater impacts on public recreation and access and on habitat than all alternatives.

The project is not the least damaging alternative. Even though the project is or could be conditioned to be consistent with the geologic safety, visual quality and marine habitat sections of the Coastal Act, it is not consistent with section 30210 or 30240 of the Coastal Act. There are other feasible alternatives or mitigation measures available, which would lessen any significant adverse impact the activity, would have on the environment. Therefore, the Commission finds that the proposed project is not consistent with CEQA and the policies of the Coastal Act as carried out in the certified Local Coastal Program and must be denied.

L. RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

As explained in the History of the Present Application at the beginning of this report, in the early stages of the Commission's processing of this application, Commission staff rejected the application, pursuant to Section13166(a) of Title 14 of the California Code of Regulations, as an application for an amendment that would lessen the intended effect of an approved permit. That rejection was transmitted in a letter dated January 26, 2001 (the "rejection letter"). Shortly thereafter, the applicant's counsel asked staff to reconsider its decision. In support of its request, the applicant focused primarily on the question of whether the proposed development was intended for "park purposes" and on procedural elements of how Section 13166 should be implemented. However, in a footnote, the applicant stated:

> "The rejection letter also implies that the recreational use by church school students is somehow of a lower order than that of 'public' use. We believe that this bespeaks

> an implied animus toward the Church. As such, we believe the Commission may be in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ('RLUIPA'), 42 USC §2000cc."

Commission staff has now brought the application before the Commission, and the issue of RLUIPA's application has not been raised since this statement in February. Nevertheless, the Commission notes that its action is not based upon any animus toward the Church. Although the Commission does treat recreational use by church school students differently from public use, that is not because of any characteristic of the users, but only because such use constitutes an exclusive, private use. *Any* private use would be treated differently from public use, for the reasons stated in previous sections of this report.

Moreover, the Commission has reviewed the actual provisions of RLUIPA, which prohibit certain actions even if *not* based upon animus, to ensure that its actions are not in violation of federal law in any other way. Section 2 of RLUIPA ("Protection of Land Use as Religious Exercise"), 42 U.S.C. § 2000cc, contains four separate prohibitions on government action.[6]

Pursuant to that section, the Commission may not "implement a land use regulation . . ."

- "in a manner that imposes a substantial burden on the religious exercise of a[n] . . . institution, unless the imposition of the burden . . . (A) [furthers] . . . a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest" (RLUIPA Section 2(a));

- "in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution" (RLUIPA Section 2 (b)(1));

- "that discriminates against any assembly or institution on the basis of religion or religious denomination" (RLUIPA Section 2 (b)(2)); or

- "that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction" (RLUIPA Section2(b)(3)).

These sections are inapplicable, initially, because the Commission's action does not involve the implementation of a "land use regulation" as RLUIPA defines that phrase. RLUIPA specifically defines "land use regulation" to mean "a zoning or landmarking law . . . that limits or restricts a claimant's use or development of land . . . if the claimant has an ownership, leasehold, easement, servitude, or other property interest . . . or a contract or option to acquire such an interest." RLUIPA Section 8(5); 42 U.S.C. § 2000cc-5(5). The

[6] These prohibitions apply to all state agencies, including the Commission. 42 U.S.C. § 2000cc-5(4).

Coastal Act provisions implemented by the Commission's decision are neither zoning nor landmarking laws.

Furthermore, even if the Commission's action were to constitute implementation of a "land use regulation" for purposes of RLUIPA, it meets none of the four criteria listed above. Regarding the first prohibition, in RLUIPA Section 2(a), the Commission notes that its action imposes no substantial burden on the applicant's religious exercise. The proposed development is not designed to facilitate the exercise of religion (much less is it central to such exercise). Thus, denial of the proposal does not burden the applicant's exercise of religion, much less substantially burden it.

Secondly, with respect to RLUIPA Section 2(b)(1), the Commission's action treats the applicant on terms that are identical to those it would apply to any non-religious entity applying for the same development. Indeed, as the applicants pointed out in their February letter, the City of Los Angeles, a non-religious entity, is a co-applicant, and its presence did not cause the Commission to apply a different standard to the application. Although it is true that an application to create a sports field for general public use might be treated differently, that is not due to the fact that such an application could come from a non-religious entity. A religious entity could apply to build ballfields that would be open to the general public; in fact, it has been suggested that Calvary reach an agreement with the City that would make the ballfields essentially open to the public. Such an application could be treated differently because it would be for a fundamentally different sort of development. It is the nature of the proposed development, and the fact that it involves private, semi-exclusive use of the land, which is burdened by the existing permit conditions, rather than the nature of the applicant, that is critical to the Commission's decision.

Finally, the Commission's action does not discriminate against the applicant on the basis of religion or religious denomination, and it does not exclude or unreasonably limit religious assemblies or institutions from any jurisdiction. Consequently, the Commission concludes that its action is not in violation of the Religious Land Use and Institutionalized Persons Act of 2000.

M. UNPERMITTED DEVELOPMENT

In visiting the site, the staff discovered some development that had not been authorized:

1) Fire clearance up to 200 feet of the structure. Fire clearance up to 100 feet from the structure, is contemplated in the permit A-381-78A. However, the condition addressing permitted uses on land outside the urban limit line, condition 1c states "vegetation within 100 ft. of any residential structure may be removed or altered for fire protection purposes." The condition addressing deed restricted land outside the urban limit line

and condition 3 b. states that the recorded deed restriction "prevent(s) development outside the urban limit line except for park purposes."

2) Staff also observed an outdoor meeting area beside the stream, under the trees about 200 yards up the creek on city property. The development consisted of a low-key development with foot trails, had installed wooden benches in a small amphitheater accommodated about 30 people, and minimal grading.

Placement of benches on city park land in areas dedicated as part of this permit may be within the authority of the executive director to approve under the terms and conditions of permit A-381-78A. Had the City sought permission would have considered the project and determined whether or not a permit or a permit amendment was required. Under the categorical exclusion for public facilities, replacement of benches in city parks or maintenance of trails does not need a permit. The creation of a new meeting area does require review.

Fire clearance orders now require clearance more land than they did in 1978-1980. However staff often works with landowners to minimize habitat damage when they are carrying out fire clearance. In this instance, according to Calvary officers, City crews carried out the clearance. The fire clearance should have been presented to the staff to determine whether an amendment was necessary, and was not.

To ensure that the unpermitted development component of this application is resolved in a timely manner, the Commission encourages the City and or Calvary to discuss these activities with staff and determine whether they were contemplated under the original permit, need a new permit, or could be exempt.

Although staff discovered some development on the property that has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.